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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,153	02/07/2006	Andrew Goldsmith	3165-138	9052

6449 7590 02/09/2007  
ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
1425 K STREET, N.W.  
SUITE 800  
WASHINGTON, DC 20005

EXAMINER
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PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	02/09/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/09/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,153	<b>Applicant(s)</b> GOLDSMITH, ANDREW	
	<b>Examiner</b> Alton N. Pryor	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 15-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 15-24 and 26-29 is/are rejected.
- 7) ☐ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/7/06;10/14/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-24,26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koppenhagen et al (WO 0005951; 2/10/00) and Martin (EP 279068; 08/24/88).

Koppenhagen teaches an aqueous (flowable) composition comprising pesticides such as herbicides, which control weed growth in plants. See abstract, page 1, 2<sup>nd</sup> paragraph, page 15, 1<sup>st</sup> full paragraph, page 6, 1<sup>st</sup> full paragraph. Koppenhagen teaches the encapsulated material comprising a surfactant. See page 6, 1<sup>st</sup> full paragraph.

Koppenhagen teaches that the surface active (surfactant) can be any wide variety of compound known to lower the surface tension of a fluid interface, including both nonionic and anionic surfactants. See page 17, 2<sup>nd</sup> full paragraph. Koppenhagen teaches the use of a resin of urea-formaldehyde polymer for encapsulating the herbicide. See page 16, 1<sup>st</sup> full paragraph – 3<sup>rd</sup> full paragraph. Koppenhagen teaches a capsule suspension containing two materials with one material being encapsulated and the other contained in the aqueous phase. See page 23, 1<sup>st</sup> paragraph, claims 1,29-32.

Koppenhagen does not teach pendimethalin as the herbicide and the instant ratio of microencapsulated pendimethalin to non-encapsulated pendimethalin. However, Martin teaches that pendimethalin is a herbicides. Therefore it would have been obvious to one

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having ordinary skill in the art to make a flowable composition comprising both encapsulated and non-encapsulated pendimethalin. One would have been motivated to do this because Koppenhagen broadly teaches the making of an aqueous composition comprising both an encapsulated and non-encapsulated herbicide. Additional motivation would be the production of a composition that would have an immediate to longer effect on weed control in plants. With respect to the ratio and amounts / concentration of ingredients, one having ordinary skill in the art would have been motivated to determine the optimum amount of each ingredient of the instant invention. One would have been motivated to do in order to develop an invention that would have been effective at controlling weeds without destroying the desired plant. In the absence of unexpected results for the instant surfactants, Koppenhagen makes the instant surfactants obvious. Note Koppenhagen is open to a wide variety of anionic and nonionic surfactants including the instant surfactants absent a showing of the criticality of the instant surfactants.

### ***Claim Objection***

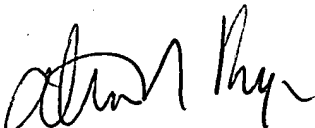
Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest a composition comprising the instant amount of each ingredient as expressed in the claim.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor  
Primary Examiner  
AU 1616